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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – WEST DISTRICT

Simone Shah, an individual,

Plaintiff,

vs.

Lisa Kwon, an individual, and Does 1-50 inclusive,

Defendants.

Case No. 22SMCV00584

Hon. H. Jay Ford III, Dept. O

BRIEF IN SUPPORT OF LISA KWON'S SPECIAL MOTION TO STRIKE UNDER THE ANTI-SLAPP STATUTE

[Filed concurrently with Lisa Kwon' Notice of Special Motion to Strike Under the Anti-SLAPP Statute and Special Motion to Strike Under the Anti-SLAPP Statute; Declaration of Lisa Kwon; Declaration of Maggie Clancy; Declaration of Annie Powers; Declaration of [redacted].]

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Introduction

Knock LA, a progressive news outlet, accepted a pitch from defendant and journalist Lisa Kwon to write an article about housing in Los Angeles. In reporting that article, Kwon learned of Dwell Management, a prominent landlord and property management company in Los Angeles. As journalists often do, Kwon used Dwell as a frame to address issues affecting the Los Angeles housing market generally. She provided the piece to Knock, which fact-checked and published it. Four months after publication, Dwell's owner, Simone Shah, sent a demand for a retraction to Knock (but not to Kwon). The publication defended the piece, provided evidence of the truth of the statements in the piece, and warned about an anti-SLAPP motion if the company sued. Eight months after that, Shah (and not her company) filed suit against Kwon (but not Knock). And she filed torts for personal defamation, not trade libel—the more difficult-to-prove defamation tort applicable to statement about a business. Regardless of the crafty pleading choices, the suit is a SLAPP. It brings time-barred and frivolous claims against nonactionable statements made in news reporting on an issue of public interest. The Court should strike the entire Complaint or, in the alternative, each of the statements identified in the notice.

Facts

Lisa Kwon is a freelance journalist based in Los Angeles. (Declaration of Lisa Kwon, ¶ 2.) Her work has appeared in Vice, National Geographic Traveler, Cultured Magazine, Prism, Time Out Los Angeles, Eater, Eater Los Angeles, OpenTable, Alternative Press, and more. (*Ibid*.)

In March 2021, Kwon pitched a story to Knock LA about the effect of short-term rentals on the L.A. housing supply, as well as NOlympics, a volunteer-run coalition of community groups organizing to stop the L.A. 2028 Olympics, and their 2021 "Locks On My Block" project—a map of Airbnbs run out of formerly long-term housing throughout L.A. County. (*Id.*, ¶ 3.) Knock LA is a progressive news outlet and publication providing "accurate, reliable, hyperlocal coverage of Los Angeles exploring critical issues like law enforcement misconduct, corporate labor abuses, and the housing and homelessness crisis." (Knock LA, *About Us,* available at: https://knock-la.com/about-us/.)

The City of Los Angeles has fairly strict regulations on short-term rentals. In December 2018, Los Angeles enacted Ordinance 185931, which amended various sections of the Los Angeles Municipal Code to regulate short-term rentals. (Ordinance 185931 (enacted Dec. 17, 2018), available at:

https://planning.lacity.org/ordinances/docs/homesharing/adopted/Final%20Ordinance.pdf.) The ordinance generally restricts short-term rentals to the renter's principal residence, limits short-term listings to 120 nights per year, and prohibits short-term rentals of rent-stabilized units. (*Ibid.*) The City's general lack of enforcement of these regulations has generated significant media coverage.[1]

Knock accepted the pitch and Kwon got to reporting the piece. (Kwon Decl., ¶¶ 3, 5.) In the course of her reporting, she interviewed three sources who were tenants living in apartments owned by Dwell Management. (*Id.*, ¶¶ 6–10.) Plaintiff Simone Shah owns and operates Dwell. (See Complaint, ¶ 21.)

One tenant, Annie Powers, told Kwon that each tenant in her Echo Park building could use their apartment key to open every other apartment. (Kwon Decl., ¶¶ 7–8; Declaration of Annie Powers, ¶ 4.) Powers corroborated the story with an email from Dwell Management (dwellmgt@gmail.com) and signed by Dwell apartment manager Kyra Ackerman admitting to this. (Powers Decl., ¶¶ 5–7 & Ex. A.) It read: "Hello Echo Park Residents, Apparently your keys can open each others['] front doors. Yes, very weird and I had no idea this was the case. I will be getting all the doors rekeyed, getting estimates today and hopefully get it done early next week. Please let me know if you have any questions. Best, Kyra." (*Id.*, Ex. A.) Powers also shared letters an eviction law firm sent her on behalf of Dwell threatening her with eviction less than two weeks after not paying rent amid the height of the COVID-19 pandemic. (*Id.*, ¶¶ 8–9 & Ex. B; Kwon Decl., ¶ 8.) The law firm is among the most notorious eviction firms in Los Angeles. Its website is Evict123.com.

Another tenant, [redacted], told Kwon about numerous complaints she had with Dwell related to her apartment, including the front door to the building being repeatedly left open; Dwell staff members, including the building manager, who failed to wear masks inside the property during the summer of 2020; units being rented out as short-term rentals; and Dwell's inability to provide video footage after some

[1] See, e.g., Reyes & Boston, *Thousands of online listings are violating L.A.'s new short-term rental law*, L.A. Times (Aug. 9, 2020), available at: https://www.latimes.com/california/story/2020-08-09/los-angeles-short-term-rental-violations; Zahniser, *Nearly 1 in 5 Airbnb listings in L.A. violated city law, advocacy group says*, L.A. Times (Mar. 20, 2022), available at: https://www.latimes.com/california/story/2022-03-30/report-on-home-sharing-targets-airbnb; Ross, *Los Angeles Is Ignoring Thousands of Violations of Its Airbnb Law, New Report Finds*, L.A. Taco (Mar. 2, 2023), available at: https://lataco.com/airnbnb-laws-violations.

expensive shoes were stolen from outside [redacted] unit. (Kwon Decl., ¶ 9.) [redacted] also provided source material documenting [redacted]'s disputes with Dwell and Shah. (*Id.*,¶ 9 & Exs. A–D.) Notably, while Shah responded to many of [redacted]'s complaints, Shah was silent about [redacted]'s complaints about units in the building being rented out as short-term rentals. (*Ibid.*)

Kwon's third source, [redacted], told Kwon that requests for maintenance or other issues went unanswered in a timely manner. (*Id.*, ¶ 10; Declaration of [redacted], ¶¶ 4–5.) [redacted], too, supported his stories with communications between him and Dwell that he provided to Kwon. (Kwon Decl., ¶ 10; [redacted] Decl., ¶ 5.)

Kwon researched Dwell on her own, too. (Kwon Decl., ¶¶ 11–27.) She searched for and located an Airbnb profile for the company. (*Id.*, ¶11.) The profile listed multiple properties. (*Ibid*.) She searched for and located a Yelp page where tenants, former tenants, and potential tenants who were unhappy with Dwell's services as a property manager or a landlord left negative reviews of the company, including that they turned apartments in Airbnbs. (*Id.*, ¶ 22.) While Shah responded to each of the negative reviews and addressed their content, she did not disclaim that Dwell turns apartments into Airbnb rentals. (*Id.*, ¶ 23.)

Before sending the article to Knock, Kwon confirmed the facts she intended to report with her sources. (*Id.*, ¶ 30.) Each confirmed the facts. (*Ibid*.)

On April 19, 2021, Kwon sent piece to Knock's editors. (*Id.*, ¶ 31.) The editors made several rounds of edits and fact checked the piece, including that Dwell, at the time, offered multiple units for short-term rentals in Los Angeles. (Declaration of Maggie Clancy, ¶¶ 6–7.) The editors provided questions and edits. (*Ibid.*) Kwon addressed them. (*Ibid*.; see also Kwon Decl. ¶ 32.)

Knock published the piece on April 25, 2021. (Clancy Decl., ¶ 8.) Four months later, counsel for Dwell and Shah sent a cease-and-desist letter to Knock. (*Id.*, ¶ 9 & Ex. A.) It was titled "Knock LA Editorial of Dwell Management, LLC." It complained that Knock "engaged in defamation, placing Dwell in a false light, tortious[ly] interfere[d] with Dwell's economic advantage, and [engaged in] unfair business practices." (*Ibid.*) It identified statements Dwell believed to be untrue and tortious. (*Ibid.*)

Knock's editorial staff responded to Dwell's letter. (*Id.*, Ex. B.) Knock's response went through the statements Dwell identified as allegedly tortious and defended their truth, including providing

underlying evidence. (*Id.*, Ex. B.) It also stated Dwell would not prevail on its claims and that Knock would file and prevail on an anti-SLAPP motion to strike any claims that Dwell did file against Knock. (*Ibid.*)

Neither Dwell nor Shah ever requested a retraction from Kwon or sent her a cease-and desist-letter.

Apparently convinced by Knock's response, Dwell did not sue Knock. In fact, Dwell sued no one. But Shah, as an individual and without her company, sued Kwon for defamation per se, defamation per quod, and false light over the article a year and a day after Knock published it. Another year and a half later, Shah served her complaint.

Argument

In ruling on an anti-SLAPP motion, courts engage in a familiar two-step process. First, the court decides whether the plaintiff's claims arise from protected activity. (*Equilon Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67.) Second, if so, the burden shifts to the plaintiff to establish a probability of prevailing on her claims based on admissible evidence. (*Ibid.*) To do so, the plaintiff must show "that the complaint is legally sufficient and supported by a prima facie showing of facts that, if proved at trial, would support a judgment in the plaintiff's favor." (*Digerati Holdings, LLC v. Young Money Entm't, LLC* (2011) 194 Cal.App.4th 873, 884.) The motion must be granted if the "plaintiff fails to produce evidence to substantiate his claim or if the defendant has shown that the plaintiff cannot prevail as a matter of law." (*Siam v. Kizilbash* (2005) 130 Cal.App.4th 1563, 1570.)

I. The anti-SLAPP statute applies to Shah's claims because they arise from Kwon's speech on a matter of public interest in a public forum.

The anti-SLAPP statute applies to "cause[s] of action … arising from any act of that person in furtherance of the person's right of petition or free speech … in connection with a public issue." (Code Civ. Proc., § 425.16, subd. (a).) Shah's claims undoubtedly "arise" from Kwon's speech: they are all about an article Kwon wrote. (*Park v. Bd. of Trustees of Cal. State Univ.* (2017) 2 Cal.5th 1057, 1063.) Whether this speech is made in connection with an issue of public interest is based on a two-part analysis. (*FilmOn.com Inc. v. DoubleVerify Inc.* (2019) 7 Cal.5th 133, 148 (*FilmOn*).) "First, [a court should] ask what 'public issue or . . . issue of public interest' the speech in question implicates — a question [courts can] answer by looking to the content of the speech." (*Ibid.*, quoting Code Civ. Proc., § 425.16, subd.

(e)(4) (ellipsis in original).) "Second, [a court should] ask what functional relationship exists between the speech and the public conversation about some matter of public interest." (*Id.* at pp. 149–150.)

In identifying the public issue, "*FilmOn*'s first step is satisfied so long as the challenged speech or conduct, considered in light of its context, may reasonably be understood to implicate a public issue, even if it also implicates a private dispute." (*Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1253 (*Geiser*).) Defendants are "virtually always" able be able to make this showing. (*Id.* at p. 1250.)

The issue here is clear: Kwon's article directly and explicitly addresses housing availability, corporate landlords, and the effect of Airbnbs on housing availability. (Kwon Decl., Ex. F [article].) This is an issue of public interest. (See *Geiser*, 13 Cal.5th at pp. 1250–1254 [finding "residential displacement [and] gentrification" are issues of public interest]; see also *supra*, fn. 1.)

FilmOn's second step looks to the context of the speech to determine "what functional relationship exists between the speech and the public conversation about some matter of public interest." (*FilmOn*, *supra*, 7 Cal.5th at pp. 149–150.) These contextual factors include the identity of the speaker, its audience, and its purpose. (*Id.* at p. 145.) All these factors show that Kwon's speech connects to the public issue of housing availability, and the role of Airbnb rentals in reducing housing availability specifically.

Kwon's identity shows that her speech furthered the conversation on the public issue. Unlike the private, for-profit enterprise selling its commercial products in *FilmOn*, Kwon is a freelance journalist who prepared a piece for a local news publication. Kwon's audience was the editors and publishers of a local news publication, who she understood to intend to publish the piece (and who in fact did so). Finally, the purpose of Kwon's speech shows an intent to further public conversation on the public issue: she reported on the issue for a news publication. There could hardly be a clearer case of a connection to a public issue than a reporter reporting on this issue.

II. Shah will be unable to show a probability of prevailing on her claims.

Because the anti-SLAPP statute applies to Shah's claims, the burden shifts to Shah to prove that her claims are legally sufficient and supported by a prima facie evidentiary showing of success. At this point, "a plaintiff seeking to demonstrate the merit of the claim 'may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence.'" (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940 [citation omitted].)

Shah cannot meet her burden. She filed after the statute of limitations. Even if she hadn't, she will be unable to prevail on her claims because the statements her claims are based on either do not involve her personally, are substantially true, are nonactionable opinion, were not made with malice, and involved reasonable care. Any one of those defects means her claims are meritless, and most of the statements she raises involve all those defects. In addition, Shah will be unable to even show damages from Kwon's publication to Knock rather than Knock's publication to the world.

A. Shah's claims are barred by the statute of limitations.

Both defamation per se and defamation per quod have a one-year statute of limitation. (*Bernson v. Browning-Ferris Industries* (1994) 7 Cal.4th 926, 940; Code Civ. Proc., § 340, subd. (c).) So does false light. (*Medical Marijuana, Inc. v. ProjectCBD.com* (2020) 46 Cal.App.5th 869, 886.)

Knock published the article on April 25, 2021. (Compl., ¶ 8.) Shah filed suit on April 26, 2022. Shah missed the statute of limitations. And she has made no motion for her Complaint to be filed *nunc pro tunc* as of April 25, 2021 in the year-and-a-half since she filed the complaint. Shah cannot show a probability of prevailing on time-barred claims.

B. Shah cannot meet her burden of showing a probability of prevailing on her defamation claims.

1. Most, if not all, of the statements do not even involve Shah personally.

The elements of the defamation torts differ depending on what or who is being discussed.

Defamation is a personal reputation tort; it protects the reputation of a human individual. Its elements differ depending on whether the defamation is "per se (on its face), or per quod (literally meaning, 'whereby')." (*Palm Springs Tennis Club v. Rangel* (1999) 73 Cal.App.4th 1, 5 (*Palm Springs*).) Its elements also change depending on the person and subject under discussion. Statements involving a public official, public figure, or limited purpose public figure require proof of actual malice, meaning the speaker knew the allegedly defamatory statement was false or had serious doubts about its truth. (CACI 1700 & 1701.) Statements about a private figure that address an issue of public concern require the plaintiff to prove that the speaker failed to use reasonable care to determine the truth or falsity of the statement. (CACI 1702 & 1703.) Statements that are both about a private figure and only involve a matter of private concern just require a showing of falsity, harm, and proximate cause. (CACI 1704 & 1705.)

A similar but distinct tort applies to statements impinging the reputation of a business: trade libel. (CACI 1731.) "Trade libel is an intentional disparagement of the quality of services or product of a business that results in pecuniary damage to the plaintiff." (*J-M Mfg. Co., Inc. v. Phillips & Cohen LLP* (2016) 247 Cal.App.4th 87, 97.) "While a cause of action for trade libel resembles that for defamation, it differs from it materially in the greater burden of proof resting on the plaintiff, and the necessity for special damage in all cases." (*Muddy Waters, LLC v. Superior Court* (2021) 62 Cal.App.5th 905, 925 (*Muddy Waters*), cleaned up.) Trade libel requires actual malice in *all* cases. (CACI No. 1731, subd. (4).) And "unlike a claim for defamation, trade libel requires as an essential element that the plaintiff suffered direct financial harm because someone else acted in reliance on the defendant's statement." (*Muddy Waters*, *supra*, 62 Cal.App.5th at p. 925, citing CACI No. 1731.) So the requirements are much stricter.

Kwon's article concerns Dwell's business practices. This means the right plaintiff—i.e., the real-party-in-interest—to assert defamation of Dwell is Dwell, not Shah personally. (See, e.g., *Palm Springs*, *supra*, 73 Cal.App.4th at p. 4 [corporation and board member are separate entities with separate interests and defamation claim must be asserted by the correct real-party-in-interest].) In fact, when Shah's counsel demanded Knock retract the article, he sent the letter on behalf of Dwell and Shah both, referencing them collectively as Dwell. (See Clancy Decl., Ex. A.) Yet when Shah filed this case, Dwell vanished—likely because Shah realized she and Dwell cannot meet the requirements for alleging trade libel.

Statements 8 though 12 do not mention Shah *at all*. (See Compl. ¶¶ 11(h), 12(a–d).) They are each general editorial statements about housing policy and availability in the city. They cannot support a personal defamation claim against Shah. And they certainly cannot support Shah's defamation *per se* claim. (*Balla v. Hall* (2021) 59 Cal. App.5th 652, 690 ["defamation per se turns on whether the defamatory meaning is clear"].) The Court should strike all allegations related to these five statements.

Statements 1, 4, and 7 also do not mention Shah explicitly. (See Compl., ¶ 11(a, d, g).) They refer to tenants' buildings or landlords. These tenants rented from Dwell Management, not Shah herself. The real-party-in-interest for any defamation claim arising from statements 1, 4, and 7 is Dwell, not Shah. And the tort is trade libel, not defamation, which requires a showing of actual malice plus proof of direct financial harm. Shah is attempting a shell game to evade the elements of trade libel through creative pleading. The Court should strike all allegations related to statements 1, 4, and 7.

Even statements 2, 3, 5, and 6 are about Dwell's business practices more than they are about Shah personally. (See Compl., ¶ 11(b, c, e, f).) Admittedly, each of those statements names Shah, but they still speak in terms of failures of her business: delaying repairs, hiring lawyers to send intimidating letters, and renting out units on Airbnb. Each of those were actions Shah took as an agent for Dwell.

While corporations must naturally act through individuals, Dwell is a separate legal entity with its own responsibilities and ability to sue and be sued. Like all states, California law presumes a separate existence of corporate entities. (*Mid-Century Ins. Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1212.) "Separate legal personality has been described as an almost indispensable aspect of the public corporation." (*First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba (Bancec)* (1983) 462 U.S. 611, 625). If any of the tenant-sources in the articles sought legal redress over the inhabitability of their units, Dwell would be the entity they could sue. If they sought to sue Shah, she would be protected by the limited and separate legal personality of the corporate form. But it cuts both ways; criticism of Dwell as a company—even of the individual corporate agents who carry out the corporate functions—is not actionable by the individual.[2] It's the corporation's claim, and trade libel has stricter requirements than personal defamation. The Court should strike all allegations related to statements 2, 3, 5, and 6, too.

2. Even if Shah could sue over these statements, none of them are actionable.

To succeed on a defamation claim, the First Amendment and the anti-SLAPP statute place the burden on plaintiffs to show that each statement that they claim is defamatory is, in fact, "provably false," rather than nonactionable opinion. (*Ferlauto v. Hamsher* (1999) 74 Cal.App.4th 1394, 1401.) Whether a statement is provable fact or nonactionable opinion is a question of law. (*Chaker v. Mateo* (2012) 209 Cal.App.4th 1138, 1149.)

Distinguishing between fact and opinion in the defamation context requires consideration of the "totality of the circumstances which gave rise to the statements and in particular the context in which the statements were made." (*Id.* at p. 1147.) "'[W]hat constitutes a statement of fact in one context may be treated as a statement of opinion in another, in light of the nature and content of the communication taken

[2] In at least in one part of her Complaint, Shah seeks to have it both ways. In paragraph 21, Shah seems to allege an injury "on behalf of herself and Dwell Management." (Compl., ¶ 21.) That's not how it works. If Dwell wants to assert its injury, it must sue.

as a whole.'" (*Summit Bank v. Rogers* (2012) 206 Cal.App.4th 669, 698.) "This contextual analysis demands that the courts look at the nature and full content of the communication and to the knowledge and understanding of the audience to whom the publication was directed." (*Baker v. Los Angeles Herald Exam'r* (1986) 42 Cal.3d 254, 261.)

Along with proving each statement is fact and not opinion, it is also Shah's burden to establish falsity. (*Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359, 1382.) That burden cannot be satisfied, as a matter of law, if the statements are substantially true, that is, if "the substance, the gist, the sting, of the libelous charge is justified." (*Masson v. New Yorker Magazine, Inc.* (1991) 501 U.S. 496, 517, cleaned up.) A court evaluating whether challenged statements are substantially true must examine whether a statement "would have a different effect on the mind of the reader from that which the pleaded truth would have produced." (*Ibid.*, quotations omitted.) This, too, is for the Court to decide as a matter of law. (*Ibid.*) Shah cannot meet these standards as a matter of law for *any* of the 12 challenged statements.

i. Statement one is at least substantially true.

> *"A renter in one building discovered that she had compromised the privacy and physical safety of each tenant, as every one of their doors had the same lock."* (Compl., ¶ 11(a).)

This statement is true. Kwon relied on a tenant's account of her Dwell building where each tenant's keys could open other tenants' doors. (Kwon Decl., ¶ 7; Powers Decl., ¶ 6 & Ex. A.) The tenant provided Kwon an email from Dwell admitting this. The statement is true, or at least substantially true.

ii. Statement two is mix of opinion and at least substantially true fact.

> *"Shah and others take a multipronged approach to maximizing profits, which means ignoring tenant requests, delaying repairs to maintain uninhabitable conditions, hiring lawyers to send intimidating letters as a means of pressuring them out, and turning what used to be long-term housing into Airbnbs for tourists"* (Compl., ¶ 11(b).)

This statement is also true, or at least substantially true. For starters, the statement includes a list of things both "Shah *and others*" do, meaning it is false only if no one does these things or that Shah has never done even one of them. But either way, each aspect of this statement is true as to Shah.

Whether an approach to maximizing profits is multipronged is "an expression of subjective judgment." (*Moyer v. Amador Valley J. Union High Sch. Dist.* (1990) 225 Cal.App.3d 720, 725.) To the extent it is factual, it is substantially true, as shown by Shah's successful residential real estate business. (See,

e.g., Compl., ¶¶ 1 [identifying Shah as "a real estate investor who owns a number of multi-unit residential properties"] 33 [alleging Kwon's article injured Shah to the tune of a quarter million dollars].)

The claim that Shah (or others) have "ignor[ed] tenant requests" and "delay[ed] repairs to maintain uninhabitable conditions" is also at least substantially true. Kwon's sources, who lived in Dwell buildings, told her about problems they had with Dwell buildings and management that included front building doors not closing properly and staying shut; identical keys for the front doors of multiple units in one of Shah's buildings; tenants experiencing unsafe, maskless in-person interactions with Dwell staff members, such as building managers; and Dwell's inability to provide requested building video footage after a small robbery, among other complaints. (Kwon Decl., ¶¶ 7–10 & Exs. A–D.) Multiple sources provided Kwon with copies of their emails politely asking Dwell to complete repairs in their long-term rental apartments after their requests sent via a cell phone application went unanswered in a timely manner. (*Ibid*.) Dwell's responses often escalated to blaming residents and revealing private facts about Dwell Management staff and blaming staff for the maintenance shortcomings while not fixing the maintenance problems. (*Ibid.*)

The claim that Shah (or others) "hir[ed] lawyers to send intimidating letters as a means of pressuring them out" is also at least substantially true. A tenant told Kwon that Dwell had an eviction lawyer send her and others a letter less than two weeks after unpaid rent was due amid the height of the pandemic and during an eviction moratorium. The source provided Kwon a copy of the letter. (Powers Decl., ¶ 8, Ex. B.)

The claim that Shah turned what used to be residential housing into Airbnbs for tourists is at least substantially true. Dwell's Airbnb page was and is full of apartments for tourists. (Kwon Decl., ¶¶ 11–22.) While many of Dwell's listing were short-term rentals when Knock ran the piece, most (but not all) of them now require a 30- or 31-night minimum stay. (Clancy Decl., ¶ 7.) But changing the listings later (possibly in anticipation of a defamation suit) doesn't change what the facts were when Kwon reported the story. Either way, the fact that these units went from long-term housing to Airbnbs for tourists is true whether the Airbnbs require a minimum stay of one night or a hundred. And Dwell's properties appear on the map of apartments turned into short-term rentals, as reported by tenants. (Kwon Decl., ¶ 28.)

iii. Statement three is substantially true.

"Prior to signing, Simone had never disclosed to them that any of the units in the building were being rented out as Airbnbs. Yvette eventually found out when a friend discovered that she was not able to rent an available unit because Simone told her it's being used to host guests." (Compl., ¶ 11(c).)

This statement is at least substantially true. Kwon's source informed her that before signing a lease, Shah nor anyone else with Dwell informed her that any units were being rented out as short-term rentals. (Kwon Decl., ¶ 9.) That source had a friend who applied to live in the same building and was told there were no available units because the unit was used to host guests. (*Ibid*.)

iv. Statement four is protected opinion.

"The proof was glaring: her landlord is not interested in creating a habitable place for renters." (Compl., ¶ 11(d).)

This statement is protected opinion. The context of the statement makes this clear. The challenged statement is the concluding sentence to a paragraph about a tenant who experienced Dwell employees and short-term renters not wearing masks in the building, and one unit hosting a party, during one of the city's largest COVID-19 spikes—statements Shah noticeably doesn't challenge. The statement that Dwell was not interested in creating a habitable place for that tenant is an evaluative opinion based on the preceding facts in the same paragraph, as well as the entire context of the critical editorial piece.

v. Statement five is at least substantially true.

"Many of Shah's Airbnb hotels are listed on Locks On My Block's map." (Compl., ¶ 11(e).)

This statement is true. Locks On My Block is an interactive map published by an advocacy organization to identify buildings being rented as short-term rentals. At least three Dwell Management properties are listed on the map: 420 Burlington, https://locks.netlify.app/#/article/2020-12-15-420-s-burlington-ave; 139 S. St. Andrews Place, https://locks.netlify.app/#/article/2020-12-15-139-s-st-andrews-pl-90004; and 1672 S. Harvard Avenue, https://locks.netlify.app/#/article/2020-12-15-1672-s-harvard-ave-90006/.

vi. Statement six is a mix of opinion and at least substantially true fact.

"Several of Shah's tenants have anonymously reported different ways that she has harassed them or their neighbors . . . all while vacated units are being spruced up for short-term renters." (Compl., ¶ 11(f).)

This statement is true. Kwon's sources described behavior they experienced that they found to be harassing, including threatening them with eviction during an eviction moratorium. And they reported units in their building being rented as short-term rentals.

vii. Statement seven is at least substantially true.

> *"Meanwhile Brett is still waiting for things inside his own unit to be fixed. For now, he is one of the last long-term tenants left in his apartment building. The rest of the units either lie vacant or welcome a steady flow of Airbnb guests."* (Compl., ¶ 11(g).)

This statement is true. At the time Kwon reported her story, [redacted] was waiting on Dwell to do the maintenance he requested in his unit. (Jacobson Decl., ¶ 5.)

viii. Statements eight through twelve are all protected opinion or not even about Shah.

Statements eight through twelve are all nonactionable because they are either pure opinion, are not about Shah, or both.

Statement eight is pure opinion:

> For every Shah who paints herself as a good 'real estate investor,' there are plenty of renters who have been subject to the actions of anyone but. There is no such thing as an 'ambivalent landlord' as long as anyone is scaring people out of their homes to rake in profit. Anyone who is hoarding residential units is making a clear statement that they are in the business of hurting people and gutting our communities.

(Compl., ¶ 11(h).) This statement is not a fact that can be proven true or false.

Statements nine through twelve are all generalized statements about landlords and real estate investors generally. (Compl., ¶ 12(a–d).) They are not about Shah and they cannot be reasonably interpreted as being solely about Shah. (*Milkovich v. Lorain Journal Co.* (1990) 497 U.S. 1, 20 [noting that "statements that cannot 'reasonably [be] interpreted as stating actual facts' about an individual" are protected so as to ensure "that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation"].) It's not as if Kwon avoided naming Shah or Dwell in the article. It named them both repeatedly. If Kwon wanted to make these statements about Shah specifically, she would have. Instead, Kwon was making more general points about landlords and real estate investors writ large. No reasonable reader would think that these explicitly generalized statements would be about Shah given that the article mentions Shah and Dwell specifically when it speaks about them specifically.

3. Shah cannot establish malice by clear and convincing evidence.

Because Shah is a limited public figure, she must show with direct evidence that Kwon acted with actual malice. A limited public figure is one who "voluntarily injects" herself into a public controversy and thereby becomes a public figure for a limited range of issues. (*Gertz v. Robert Welch, Inc.* (1974) 418

U.S. 323, 351–352 (*Gertz*).) "A plaintiff can [become a limited public figure] by discussing the matter with the press or by being quoted by the press, thus thrusting himself into the vortex of a public issue." (*Rudnick v. McMillan* (1994) 25 Cal.App.4th 1183, 1190, citing *Gertz*, *supra*, 418 U.S. at p. 352.)

Shah did just that. She is a high-profile property owner in the Los Angeles real estate industry and owns a major real-estate rental and property management company. She appeared on NPR's Marketplace to discuss gentrification in the areas in which she buys and operates property. (Clark, *Confessions of an Ambivalent Landlord*, Marketplace (Sept. 22, 2015), available at: https://www.marketplace.org/2015/09/22/york-fig-confessions-ambivalent-landlord/.) Even operating a high-profile real estate company in the midst of an acute housing crisis is alone sufficient for Shah to be a limited public figure because some high-profile careers simply invite attention. (See *McGarry v. Univ. of San Diego* (2007) 154 Cal.App.4th 97, 115 ["one's voluntary decision to pursue a career in sports, whether as an athlete or a coach, invites attention and comment regarding his job performance and thus constitutes an assumption of the risk of negative publicity," internal quotations omitted].)

A limited public figure bringing a defamation claim must prove actual malice. (CACI 1700 & 1701.) The actual malice standard requires Shah establish Kwon wrote the article knowing the statements were false or that Kwon had serious doubts about the truth of the statements. (*Id.*; see also *Reed v. Gallagher* (2016) 248 Cal.App.4th 841, 862.) This is a subjective standard; it asks whether *Kwon herself* had such knowledge or doubts, "not by whether a reasonably prudent person would have published the statement or would have investigated before publishing it." (*Sutter Health v. UNITE HERE* (2101) 186 Cal.App.4th 1193, 1205.) "The clear and convincing standard requires that the evidence be such as to command the unhesitating assent of every reasonable mind." (*De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 856, internal quotations omitted.)

Shah cannot meet this high burden. Kwon relied on investigation and at least three sources who were Dwell tenants in preparing her story. Her sources provided her with emails and other source documents related to Shah and her company, Dwell Management, which Kwon reported out. Kwon believed and still believes the accuracy of the article. (Kwon Decl., ¶ 34.) Shah will be unable to meet her burden of showing with clear and convincing evidence that Kwon subjectively believed her reporting to be false or that Kwon had serious doubts about the article's truth.

4. Shah cannot establish Kwon failed to use reasonable care.

Even if the Court were to hold that Shah is not a limited public figure, she is still required to prove Kwon "failed to use reasonable care to determine the truth or falsity of the statement(s)" for her entire defamation per quod claim (CACI 1703), and actual malice for her claims for assumed and punitive damages for her defamation per se claim (CACI 1702) because the article related to a matter of public concern. (See *supra*, section I.) As shown in the preceding section, Kwon used reasonable care to determine the truth of the statements. She relied on sources who rented from Shah's companies and their emails and other communications to and from the company to ensure the truth of her statements.

5. Shah will be unable to show damages from Kwon's publication to Knock.

Shah will also be unable to prevail on her defamation claims because she will be unable to prove the essential element of damage from Kwon's publication to Knock. Shah's Complaint alleges damages resulting from Knock's publication of the article to the public. (Compl., ¶¶ 14 ["Not long after the Article was published on Knock LA's website… Because of the Article, Plaintiff has been called…"] 18 ["defamatory statements about Plaintiff online by publishing the Article on the Knock LA website…"]; 22 ["negligently made the above statements and published the Article without using reasonable care…"]; 23 ["as a result of the false statements in the article,…"]; see also *id.*, ¶¶ 27, 28, 29, 30, 36.)

But Kwon didn't publish the article to the public. Knock did. Kwon wrote the article and provided (or, in the terms of defamation law, "published") it to Knock. Knock then made edits and published the article to the world.[3]

Shah seems to have recognized it was Knock's publication to the world that caused her damage, not Kwon's publication to Knock, too. Shah's counsel sent a cease-and-desist letter to Knock accusing Knock of defaming Shah's company and her personally and demanding a retraction. (Clancy Decl., ¶ 9 & Ex. A.) Knock responded, standing by its decision to publish the piece. (*Id.*, ¶ 10 & Ex. B.) Shah never made a demand of Kwon. But for whatever reason, when it came time for Shah to bring suit, she left Knock out of it, targeting only the freelance journalist. But because Knock's publication to the world is

[3] In this sense, Knock is a necessary or indispensable party in whose absence complete relief cannot be accorded amount the parties. (See Code Civ. Proc. § 389.)

what Shah claims damaged her, and not Kwon's publication to the three editors of Knock, Shah has not pleaded and will be unable to establish damages from Kwon's publication to Knock.

C. Shah cannot prevail on her false light claim for the same reasons.

Shah's third claim is for false light, a "variety of defamation" that is "subject to the same requirements" as a defamation claim. (*Daniel v. Wayans* (2017) 8 Cal.App.5th 367, 397; see also *Tamkin v. CBS Broadcasting, Inc.* (2011) 193 Cal.App.4th 133, 149 [striking false light invasion of privacy claim because the plaintiff failed to show a probability of prevailing on defamation claim]; *Kapellas v. Kofman* (1969) 1 Cal.3d 20, 35 fn.16 (1969) (holding false light claim "is in substance equivalent to the [plaintiff's] libel claim, and should meet the same requirements of the libel claim in all aspects"). For all the reasons the Court should strike Shah's defamation claims, it should strike Shah's false light claim, too.

III. In the alternative, the Court should strike those allegations on which Shah fails to carry her burden.

If for any reason the Court concludes that the entire Complaint should not be stricken, at minimum the individual allegations identified in the notice should be stricken. "[A]n anti-SLAPP motion, like a conventional motion to strike, may be used to attack parts of a count as pleaded." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 393.) This includes striking "particular allegations within a pleading." (*Id.* at p. 394.) Every allegation in Shah's Complaint that provides the elements for her claims arises from Kwon's protected activity. (*Supra*, Section I.) As explained above, Shah will be unable to satisfy her burden on prevailing on her claims based on *any* of her allegations. But if the Court concludes that she may prevail based on some allegations but not others, the Court can choose to strike those allegations on which Shah fails to carry her burden, as identified in the notice of motion.

Conclusion

Shah's Complaint is a SLAPP and should be stricken.

Dated: September 15, 2023

/s/ Matthew Strugar
Matthew Strugar